

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HUMBERTO CHAVEZ,
Plaintiff,

v.

TRAVELERS CASUALTY INSURANCE
COMPANY OF AMERICA,
Defendant.

Case No. 22-cv-06381-VC

**ORDER DENYING MOTION TO
DISMISS**

Re: Dkt. No. 22

A motion to dismiss based on the running of the limitations period may be granted “only ‘if the assertions of the complaint, read with the required liberality, would not permit the plaintiff to prove that the statute was tolled.’” *Supermail Cargo, Inc. v. United States*, 68 F.3d 1204, 1206 (9th Cir. 1995). It seems possible that Chavez could prove facts to establish that Travelers’ communication regarding its initial payment was sufficiently open-ended to equitably toll the limitations period. *See Prudential-LMI Commercial Insurance v. Lundberg*, 51 Cal. 3d 674, 687–91 (1990); *see also Supermail*, 68 F.3d at 1207. If Travelers wishes to propose an early discovery and summary judgment schedule on the issue of timeliness, the Court will entertain it. But its motion to dismiss puts the cart before the horse, so it is denied. Travelers’ Answer is due within 14 days of this order.

IT IS SO ORDERED.

Dated: April 26, 2023



VINCE CHHABRIA
United States District Judge